

Non-responsive amendments

Applicant filed a Request for continued Examination (RCE) on 07/08/2008 but :

Newly submitted claims 60-62 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

- I. Claims 1, 5, 6, 9, 15-20, 23-27, 31, 32, 35, 41-46 and 49-52 (claims submitted on 7/11/2007), drawn to an optical information corrects a recording pulse position of accuracy of the recording pulse position is determined to be any of a plurality of degrees of accuracies depending on the information recording conditions, classified in class 369, subclass 53.2.
- II. Claims 60-62 (claims submitted on 6/23/2008), drawn to optical information is recordable at a first and second recording linear velocity that the second velocity is higher than the first velocity, classified in class 369, subclass 47.28.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as recording pulse position of accuracy of the recording pulse position is determined to be any of a plurality of degrees of accuracies depending on the information recording conditions. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be

examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 60-62 are withdrawn from consideration as being directed to a non-elected invention; however claims 60-62 are the only submitted on 6/23/2008. Therefore Applicant requires to submit new claims which should be based on the originally presented invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a **TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS**, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. **EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN T. PHAM whose telephone number is (571)272-7590. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne R. Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TAN Xuan DINH/
Primary Examiner, Art Unit 2627
September 17, 2008

/Van N. Chow/
Examiner, Art Unit 2627